

1 \$35,000.MDF

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FILED  
DISTRICT COURT OF GUAM  
JAN 16 2003 mbe  
MARY L. M. MORAN  
CLERK OF COURT

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8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE TERRITORY OF GUAM**

11 UNITED STATES OF AMERICA, )  
12 Plaintiff, )  
13 vs. )  
14 \$35,000.00 UNITED STATES )  
CURRENCY, )  
15 Defendant. )  
16 )  
17 )

CIVIL CASE NO. 02-00026

**MOTION FOR DEFAULT JUDGMENT  
AND ISSUANCE OF A PRELIMINARY  
ORDER OF FORFEITURE AND  
MEMORANDUM OF LAW**

18  
19 COMES NOW the plaintiff United States of America, by and through its attorneys,  
20 Frederick A. Black, United States Attorney, and Karon V. Johnson, Assistant United States  
21 Attorney, and hereby moves this Honorable Court for an Order granting to the United States a  
22 default judgment in this case, and issuing a Order of Preliminary Forfeiture based on the  
23 claimant's failure to file an answer, as further set forth below.

24 1. On June 14, 2002, Charles Kirtley, the next of kin of the deceased Michael C. Kirtley,  
25 filed with the Drug Enforcement Administration a claim for the defendant \$35,000.00 United  
26 States Currency. In response to that claim, the United States initiated this judicial proceeding to  
27 effect the forfeiture of this res; the Verified Complaint of Forfeiture was filed September 10,  
28

1 2002.

2 2. A copy of the Verified Complaint of Forfeiture and Notice of Arrest were mailed by  
3 this office on September 13, 2002, to Charles Kirtley at 20853 Yam Street, Orlando, Florida,  
4 32833. This was the address which claimant Kirtley had given the DEA when he initiated his  
5 claim. This Complaint was mailed by certified mail, receipt Z 324 846 246.

6 3. The United States requested the U.S. Postal Service to trace this letter, to ensure that  
7 in fact Mr. Kirtley had received it. On January 6, 2003, the U.S. Postal Service faxed this office  
8 a receipt for certified mail, attached hereto as Exhibit A. This receipt shows that the envelope  
9 was delivered to Charles Kirtley on September 26, 2002, at 14:33, and that he signed for it.

10 MEMORANDUM OF LAW

11 The Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C(6), provides  
12 that the claimant shall file a claim within 10 days after process has been executed or within such  
13 additional time as may be allowed by the court, and shall serve an answer within 20 days after the  
14 filing of the claim.

15 18 United States Code, § 983(a)(4), however, is in conflict with Rule C(6), in that it  
16 provides as follows:

17 (4)(A) In any case in which the Government files in the appropriate  
18 United States district court a complaint for forfeiture of property, any  
19 person claiming an interest in the seized property may file a claim asserting  
20 such person's interest in the property in the manner set forth in the  
21 Supplemental Rules for Certain Admiralty and Maritime Claims, except  
22 that such claim may be filed not later than 30 days after the date of service  
23 of the Government's complaint, or, as applicable, not later than 30 days  
24 after the date of final publication of notice of the filing of the complaint.

25 (4)(B) A person asserting an interest in seized property, in accordance  
26 with subparagraph (a), shall file an answer to the Government's complaint  
27 for forfeiture not later than 20 days after the date of the filing of the claim.

28 Regardless of which rule obtains, it has been approximately 103 days since Mr. Kirtley  
received the government's Verified Complaint of Forfeiture. The failure to file a claim in  
response to the government's complaint means that claimant lacks statutory standing. United  
States v. ... Lido Motel, 135 F.3d 1312 (9<sup>th</sup> Cir. 1998). The failure to file a timely answer

1 likewise deprives the claimant of statutory standing. United States v. Commodity Account No.  
2 54954930 at Saul Stone & Co., 219 F.3d 595 (7<sup>th</sup> Cir. 2000).

3 Federal Rule of Civil Procedure 55 provides that the court may enter an order of default  
4 when the party against whom relief is sought has failed to plead or otherwise defend the action as  
5 provided by law. Claimant Charles Kirtley has had ample opportunity to respond to the Verified  
6 Complaint of Forfeiture and has failed to do so.


7 PRAYER FOR A DEFAULT JUDGMENT

8 WHEREFORE, the United States of America prays that this Honorable Court issue a  
9 default judgment against claimant Charles Kirtley and an Order of Preliminary Forfeiture,  
10 forfeiting to the United States of America the defendant \$35,000.00 United States Currency and  
11 disposing of it in accordance with the law.

12 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of January, 2003.

13 FREDERICK A. BLACK  
14 United States Attorney  
Districts of Guam and the NMI

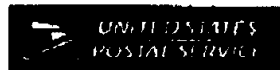
15 By:

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KARON V. JOHNSON  
17 Assistant U.S. Attorney  
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Direct Query - Intranet

Page 1 of 1

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Track/Confirm - Intranet Item Inquiry Item Number: 2324 8462 46
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This item was delivered on 09/26/2002 at 14:33.

Delivery Section	
Signature:	<i>Charles Ketter</i> <i>Charles Ketter</i>
Address:	<i>2214 Bagdad Ave Off. Ft</i>

Enter Request Type and Item Number:	
Quick Search <input checked="" type="radio"/>	Extensive Search <input type="radio"/>
<input type="text"/>	
Item Number:	<input type="text"/>

Inquire on multiple items.

Go to the Product Tracking System Home Page.

*EXHIBIT A*